
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition of Nextel Partners, Inc. for Limited)	WT Docket No. 05-302
Waiver of the December 31, 2005 Deadline)	
to Achieve Ninety-Five Percent Penetration)	
of Location-Capable Handsets Among)	
Its Subscribers)	
)	

To: The Commission

REPLY COMMENTS OF NEXTEL PARTNERS, INC.

Nextel Partners, Inc. (Nextel Partners) hereby replies to the comments filed on its Petition for Limited Waiver¹ of the Federal Communications Commission's (Commission's) rule requiring that 95 percent of the handsets in the hands of Nextel Partners' subscribers be A-GPS capable by December 31, 2005. Four comments were filed addressing the Petition. Two commenters, Motorola, Inc. and Centennial Communications Corp. (Centennial), support grant of a limited waiver to Nextel Partners and agree that the circumstances surrounding the Petition demonstrate that there is good cause to grant a limited waiver of the 95 percent benchmark.² Two commenters, the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Emergency Number Association (NENA), do not oppose the grant of

¹ Petition for Limited Waiver of Nextel Partners, Inc., CC Docket No. 94-102 (filed Oct. 17, 2005) (Petition); *see also Wireless Telecommunications Bureau Requests Comment on Nextel Partners Petition for Limited Waiver of the December 31, 2005 Deadline to Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among Its Subscribers*, Public Notice, DA 05-2761 (rel. Oct. 21, 2005).

² Comments of Motorola, WT Docket No. 05-302 (filed Nov. 4, 2005) at 1; Comments of Centennial, WT Docket No. 05-302, CC Docket No. 94-102 (filed Nov. 4, 2005) at 1.

limited relief.³ APCO, in particular, urges the Commission to subject the Nextel Partners' Petition to "close scrutiny."⁴

Nextel Partners welcomes close review of its efforts and its proposed path to full compliance. Given how quickly Nextel Partners has had to move from having no A-GPS phones available to having 95 percent of its customer base penetrated, as well as the adverse impact on penetration caused by the Motorola software glitch and the company's very low churn rates, Nextel Partners' estimate of achieving a 74.2% penetration rate of functional A-GPS phones by December 31, 2005 is laudable. Moreover, there is no disagreement that Nextel Partners has met all A-GPS handset activation benchmarks and has a plan to reach full compliance with the Commission's final benchmark. The Commission should consider these factors in evaluating Nextel Partners' request for a limited waiver of the final 95% benchmark.

I. NEXTEL PARTNERS FACES UNIQUE CIRCUMSTANCES MERITING ADDITIONAL TIME.

Nextel Partners has a proven track record of commitment to public safety and has programs in place to aggressively maximize the number of its subscribers with A-GPS capable phones. However, as discussed in the Petition, there are unique challenges posed to reaching the 95 percent final handset penetration benchmark by year's end.

With approximately 1.9 million subscribers, Nextel Partners is by far the smallest carrier

³ Consistent with its comments on other final benchmark waiver petitions, NENA suggests that, if relief is granted to Nextel Partners by the Commission, it should be for a year -- until December 31, 2006 -- with the possibility of an extension if quarterly reports show acceptable levels of conversion effort. *See* Comments of NENA, WT Docket Nos. 05-301, 05-302 (filed Nov. 4, 2005) at 3.

⁴ Comments of APCO, WT Docket Nos. 05-301, 05-302 (filed Nov. 4, 2005) at 2.

classified as “Tier I” for E911 compliance purposes.⁵ Only five of Nextel Partners’ thirty-nine markets, which are spread over thirty-one states, have over two million people. In addition, Nextel Partners serves areas with less teledensity than other “Tier I” carriers, which presents additional challenges to A-GPS handset penetration. In fact, Nextel Partners, on its own, barely misses qualifying under the ENHANCE 911 Act’s definition as a Tier III carrier.⁶

Due entirely to the need for Motorola to develop an A-GPS handset capable of operation on the Motorola-proprietary iDEN network, Nextel Partners has had one full year less than all non-iDEN wireless carriers to meet the Commission’s final A-GPS handset penetration benchmark. In 2001, the Commission recognized the unique issues posed by the proprietary iDEN Motorola network to E911 implementation by Nextel and Nextel Partners and it set a revised Phase II implementation schedule for both companies that reflected the additional time necessary for Motorola to develop a functional iDEN-based A-GPS handset. However, in granting this initial waiver, the same end date of December 31, 2005 was maintained for achievement of 95 percent customer penetration of A-GPS capable handsets. This shortened Nextel Partners’ window to achieve nearly ubiquitous penetration of A-GPS handsets from the four year period other wireless carriers were given to a mere three years. While estimates of relatively high customer churn made at that time might have supported this highly aggressive

⁵ While Nextel Partners was a party to the initial Nextel Communications, Inc. (NCI) petition for waiver, NCI has since merged with Sprint. *Applications of Nextel Communications, Inc. and Sprint Corporation; For Consent to Transfer Control of Licenses and Authorizations; File Nos. 0002031766, et al.*, Memorandum Opinion and Order, 20 FCC Rcd 13967, FCC 05-140, WT Docket No. 05-63 (2005) (rel. August 8, 2005).

⁶ “Qualified Tier III Carrier Defined. – The term “qualified Tier III carrier” means “a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001.” See ENHANCE 911 Act, P.L. 108-494, at § 107(b) (2004). As of December 31, 2001, Nextel Partners had 515,900 subscribers.

timetable, experience has proved that customer churn, as well as demand for A-GPS handsets, was not as robust as was then predicted. Failure by Nextel Partners to reach a 95 percent penetration rate in only three years is not a signal that the company has not been diligent and aggressive in its efforts to achieve the final benchmark. There is no question that A-GPS handset penetration would be more pervasive if Nextel Partners had been afforded the same amount of time as non-iDEN carriers.

Finally, Nextel Partners' handset penetration compliance efforts were severely compromised by the failure of Motorola software contained in Motorola A-GPS handsets that occurred in July of 2004. This software failure wiped out all A-GPS capability in every handset, including Phase II location capability in *all* those A-GPS handsets already in the hands of Nextel Partners' customers. Nextel Partners' prompt response to its unique challenges illustrates its good faith and concrete actions taken to achieve a 95 percent A-GPS handset penetration as soon as possible.

II. GRANT OF A REASONABLE EXTENSION OF TIME IS IN THE PUBLIC INTEREST

As explained in the Petition, despite Nextel Partners' aggressive advertising and deep discount programs designed to encourage upgrades to A-GPS handsets, certain customers continue to resist upgrading their current handsets or even the "reflashing" of Motorola handsets rendered incapable of Phase II use due to the Motorola software failure. Based on Nextel Partners' experience, business, government and other large group customers are particularly disinclined to reflash or upgrade handsets, even when those options are offered on-site and at no cost. Where carriers persistently and aggressively market the benefits of A-GPS capable

handsets to their customers and reach out in the manner Nextel Partners has, then it is reasonable to conclude that customer behavior is an obstacle to achieving full compliance by years' end.⁷

Despite these challenges, Nextel Partners continues to create incentives to encourage customer handset upgrades or reflashing. For example, every month virtually all Nextel Partners customers receive direct mail advertisements highlighting new handset models and their commercial A-GPS capabilities. Nextel Partners' customers are also offered substantial discounts on upgraded handsets, and in some cases, are offered free handsets. Direct outreach efforts target Nextel Partners' group and government users by offering them additional economic incentives to upgrade or replace their phones.⁸ In addition, Nextel Partners also systematically identifies and calls customers with non-A-GPS or non-reflashed handsets through its Customer Life Cycle ("CLC") program and offers these customers even more attractive upgrades, including discounts of up to \$250 on new A-GPS handsets.

As reported in the Petition, in response to the July 2004 Motorola software failure, Nextel Partners immediately initiated an unprecedented campaign to encourage affected customers to reflash their handsets in order that they regain the Phase II capability lost when the Motorola software malfunctioned.⁹ Nextel Partners and Motorola worked together to identify subscribers with handsets requiring a reflash and mailed hundreds of thousands of self-reflash kits,

⁷ Given the lack of uniformity in the level of PSAP Phase II readiness in Nextel Partners service areas, Nextel Partners cannot responsibly advertise or promote the public safety benefits of A-GPS capable handsets when the public safety benefit cannot be realized.

⁸ As Nextel Partners explained in its Petition, group users are particularly resistant to handset upgrades outside of the normal replacement cycle. *See* Petition at 17-18. Nevertheless, Nextel Partners routinely sends representatives to large corporate customers to perform the software upgrades for the affected handsets on the customer's site. *See also* Comments of Motorola at 6.

⁹ *See also* Comments of Motorola at 5-6.

consisting of a CD-ROM and data cable, to these subscribers so that they could regain Phase II capability simply by reflashing handsets at their home or office. In addition to immediate customer notification and prompt furnishing of self-reflash kits, Nextel Partners offered several incentives for reflashing. These included a free 30-day trial offer of Nextel Partners' commercial GPS TeleNav service¹⁰ and participation in the A-GPS re-flash sweepstakes with prizes that included a Cadillac Escalade and round-trip airfare tickets to anywhere in the continental United States.

These efforts yielded a relatively successful result – Nextel Partners regained the ground it lost from the Motorola software failure – the company went from zero percent of its subscribers having functional A-GPS capable handsets to an estimated 74.2 percent of subscribers with functional A-GPS capable handsets by year's end. However, perhaps because their A-GPS software-impaired handsets continue to function, many subscribers have yet to respond to Nextel Partners' reflash and upgrade campaigns.

Customer resistance to free or heavily subsidized handset upgrade offers demonstrates that they perceive little benefit in trading in their phones for handsets that have Phase II location capability. This relatively high level of satisfaction with existing phones ironically poses an additional challenge to achieving rapidly the 95 percent penetration goal. Moreover, since grant of its initial E911 implementation waiver request in October of 2001, Nextel Partners has maintained an average customer churn rate of 1.51 percent per quarter. Nextel Partners' churn rate has decreased in recent months – in the third quarter of 2005, for example, Nextel Partners' customer churn rate was 1.3 percent.

¹⁰ TeleNav is a GPS navigation service which provides audible and visual driving directions for mobile handsets.

Notwithstanding these challenges, Nextel Partners forecasts additional subscriber growth in the next two years, which will enhance A-GPS penetration rates. Nextel Partners anticipates continuing subscriber growth due to the introduction of new, cutting edge phones as well as its aggressive marketing of the A-GPS features of these handsets. This growth, coupled with the continuing outreach already described and continued collaboration with Motorola on additional incentives for increasing handset churn or reflashing demonstrates that Nextel Partners has a path to full compliance with the Commission's 95 percent handset penetration requirements by December 31, 2007. Achieving this final benchmark will require convincing some portion of those customers that have resisted Nextel Partners' upgrade efforts thus far. However, given Nextel Partners' continued extraordinary outreach efforts, the 95 percent benchmark goal of December 31, 2007 is achievable.

III. CONCLUSION

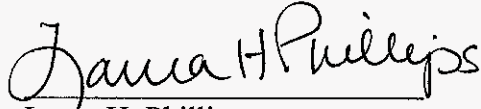
Nextel Partners has met all A-GPS activation benchmarks and has made good faith progress in reaching the 95% penetration deadline, despite the unanticipated Motorola software failure and having had one year less than carriers such as Verizon Wireless to achieve a 95

percent penetration rate. Grant of the Nextel Partners' Petition, giving it until December 31, 2007 to meet this final implementation deadline, is both necessary and advances the public interest.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 14th of November, 2005, copies of the Reply Comments of Nextel Partners, Inc. in WT Docket No. 05-302 were sent by U.S. mail to the following parties.

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